



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,371	12/04/2000	Donna N. Dillenger	YOR-999-434	3720

7590 03/28/2005

Paul D. Greeley, Esq.  
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.  
10th Floor  
One Landmark Square  
Stamford, CT 06901-2682

EXAMINER

TRUONG, CAMQUY

ART UNIT	PAPER NUMBER
----------	--------------

2195

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

461

<b>Office Action Summary</b>	<b>Application No.</b> 09/729,371	<b>Applicant(s)</b> DILLENBERGER ET AL.	
	<b>Examiner</b> Camquy Truong	<b>Art Unit</b> 2127	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some \*    c) ☐ None of:
    - 1. ☐ Certified copies of the priority documents have been received.
    - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-54 are presented for examination.
2. It is noted that although the present application does contain line numbers in the specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the examiner and Applicant all future correspondence should include the recommended line numbering.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caccavale (U.S. Patent 5,459,837) in view of Suguri et al (U.S. Patent 6,026,425).

5. As to claims 1,19 and 37, Caccavale teaches the invention substantially as claimed including: A method of the availability to do work of a plurality of

cooperating computers connected in a network (col. 3, lines 5-8 and lines 16-26),  
said method comprising:

(a) Identifying a set of specific ones of said plurality of cooperating  
computers as available resources for performance of said work (col. 3 lines 16-  
26; col. 5, lines 36-39; lines 47-50);

(b) Receiving performance related values of said plurality of cooperating  
computers (col. 2, lines 15-18 and lines 55-58; col. 4, lines 48-60);

(c) Deriving performance related metrics from said performance related  
values (col. 2, lines 18-20 and lines 38-46; col. 4, lines col.4, line 64-col.5, line 5;  
col. 5, lines 5-20).

6. Caccavale does not explicitly teach that changing said set of specific ones  
of plurality of cooperating computers based on said performance related metrics.  
However, Suguri teaches changing said set of specific ones of computer based  
on said performance related metrics (col. 4, lines 2-6 and lines 41-45; col. 15,  
lines 12-32).

7. It would have been obvious to one of ordinary skill in the art at the time the  
invention was made to combine the teachings of Caccavale and Suguri because  
Suguri's Changing said set of specific ones of computer based on said  
performance related metrics would minimize the response time of the entire  
system.

8. As to claims 2, 20 and 38, Caccavale teaches at least one of resources is heterogeneous. (col.3, lines 61-63).

9. As to claims 3, 21 and 39, Suguri teaches step (d) adds additional ones of resources or deletes one or more of said specific one to from said set (col. 4, lines 2-6; col. 15, lines 12-32).

10. As to claims 4-5, 22-23 and 40-41, Caccavale teaches step (d) changes said set independently of any architecture or operating system or any workload specific metrics (col. 4, lines 2-6; col. 15, lines 12-32).

11. As to claims 6, 24 and 42, Caccavale teaches performance values are selected from the group consisting of: response times and queue delays (col. 2, lines 18-20; col. 6, lines 3-12).

12. As to claims 7-8, 25-26 and 43-44, Caccavale teaches requesting a manager of said cluster to accept additional work or to give up pending work base on said performance related metrics (col. 4, lines 2-6 and lines 41-45; col. 15, lines 12-32).

13. As to claims 9, 27 and 45, Caccavale teaches step (a) identifies said set at a first time based on said performance related metrics and where in step (d) changes said set at a second later time (col. 4, lines 2-6 and lines 41-45).

14. As to claims 10-11, 28-29 and 46-47, Caccavale teaches step (d) is performed when a new value has been received or a request has been made to view the data (col. 4, lines 41-45; col. 15, lines 25-36).

15. As to claims 12, 30 and 48, Caccavale teaches step (d) forms said performance metrics for each of said plurality of said cooperating computers. (col. 3, lines 61-63).

16. As to claims 13, 31 and 49, they are rejected for the same reason as claims 10-11, 28-29 and 46-47.

17. As to claims 14, 32 and 50, Caccavale teaches wherein step (b) receives said performance related values over a series of time intervals (col. 4, lines 50-52; lines 58-60), and wherein step (c) derives said performance metrics for  $n$  periods, of which the performance metrics for a current interval plus  $n-1$  of the preceding intervals (col. 7, lines 5-15).

18. As to claims 15-17, 33-35 and 51-53, Caccavale teaches performance metrics for each of said periods include only a number and average of values received (col. 5, lines 3-5; col. 7, lines 5-8).

19. As to claims 18, 36 and 54, teaches step (c) said performance metrics as a data structure having n rows that contain the performance metrics of said n periods, respectively, wherein the performance metrics of the nth row of preceding interval are discarded during a current interval, and wherein said nth row of the preceding interval is used as a first row in the current interval and the remaining ones of said n rows are shifted down one row position (col. 5, lines 3-5; col. 7, lines 5-8).

### *Conclusion*

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camquy Truong whose telephone number is (571) 272-3773. The examiner can normally be reached on 8AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3756.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status

Application/Control Number: 09/729,371  
Art Unit 2127

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Camquy Truong

March 6, 2005



MENG-AL T. AN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100